S.B.CIVIL WRIT PETITION NO.6387/2007

Gopal Singh
v.
The Election Tribunal-cum-CJ(SD)No.3,Jodhpur & Ors.

Date of Order :: 9th October, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Bheemkant Vyas, for the petitioner.
Mr. Pradeep Choudhary, for the respondents.

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By this petition for writ validity, propriety and correctness of the order dated 24.9.2007 is questioned whereby learned Election Tribunal rejected the application preferred by the petitioner for seeking amendment of issues.

In brief, facts of the case are that in an election petition preferred by respondent Khinya Ram five issues were framed and out of those onus to prove two issues was on one Shri Durg Singh. Shri Durg Singh was a party to the election petition, however, he was subsequently deleted from the array of the respondents and, therefore, the returned candidate (present petitioner) preferred an application for amendment of issues and also to put onus on him to prove the issues those were required to be established by Shri Durg Singh.

By the order impugned the Election Tribunal rejected the application on the count that the issues

those were to be proved by Shri Durg Singh can very well be established while considering the issue No.2. The Election Tribunal also held the application deserves rejection being filed at a belated stage.

The contentions of counsel for the petitioner while giving challenge to the order impugned dated 24.9.2007 are that after deletion of Shri Durg Singh from the array of the respondents permission should have been granted to the petitioner to establish the important issue regarding eligibility of election petitioner Shri Khinya Ram for contesting the election and also on the ground that amendment of issues can be sought at any stage.

In response, it is pointed out by counsel for the respondents that as a matter of fact entire evidence has been completed and the election petition is fixed for final hearing. The petitioner for one or other reason want to prolong the proceedings of the election petition and present petition for writ is only a part of that tactics.

I have examined the order impugned and also perused the record available.

The issues No.4 and 5 those were to be proved by Shri Durg Singh can certainly be very well examined while deciding the issues No.1 and 2. The

issue No.2 relates to alleged wrong denial of acceptance of nomination paper and i.e. quite akin to the nature of the issue No.4. In such circumstances, I do not find any error in the order impugned that may warrant interference of this court under Article 227 of the Constitution of India.

Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.